PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77464059
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (no change)	
ARGUMENT(S)	

In the Final Office Action with a mailing date of September 22, 2014, the Examining Attorney refused registration on the basis that the mark shown in the specimen did not match the mark shown in the drawing. In response to the refusal for registration, please consider the following. The basis for the refusal of registration is that the mark in the drawing is "FIRST ASCENT" which differs from the mark on the specimen because the third-party owned registered trademark "SUNCLOUD®" appears after "FIRST ASCENT". As such, the Examining Attorney believes the specimen is not a substantially exact representation of the mark shown on the drawing which is "FIRST ASCENT" alone. TMEP §807.12(a). If the applied-for mark makes "a separate and distinct commercial impression apart from any other matter with which the mark is or will be used on the specimen," then registration should not be refused on the basis that the mark shown in the specimen does not match the mark shown in the drawing. TMEP §807.12(d). Therefore, the issue is whether the applied-for mark, "FIRST ASCENT", has a separate and distinct commercial impression apart from the commercial impression of "SUNCLOUD®". The mark "FIRST ASCENT" creates a distinct and separate commercial impression because "FIRST ASCENT" is the name of a particular line of products offered by Eddie Bauer while "SUNCLOUD®" is a separate trademark owned by another party which is used to indicate the manufacturer of the goods. In In re Royal Bodycare, Inc., 83 USPQ2d 1564 (TTAB 2007), the Board reversed a refusal of registration where a specimen showed the applied-for mark "NANOCEUTICAL" next to an additional trademark "RBC". The Board stated "[I]t is well established that a product can bear more than one trademark, that each trademark may perform a different function for consumers and recipients of the productÂ…". Ibid (citing examples of cases where a house mark and a product line mark were found to have different commercial impressions due to their different respective functions). In the present case, the function of the "SUNCLOUD®" mark is to identify the manufacturer of the goods. In contrast, the function of the applied-for mark, "FIRST ASCENT", is to identify sunglasses included in a special line of products offered by the retailer, Eddie Bauer. More specifically, the "FIRST ASCENT" product line is composed of high-performance outdoor clothing, gear and accessories that are selected by elite wilderness guides and experts. The "SUNCLOUD®" brand of sunglasses was selected to be part of the "FIRST ASCENT" branded line of products. As such, both "SUNCLOUD®" and "FIRST ASCENT" are used as trademarks for these particular sunglasses. Attachment A includes information about the selection process for the "FIRST ASCENT" line of products. As stated in Attachment A, "First Ascent is a line of world-class expedition and ski wear created with some of the best mountain and ski guides in the world." Since "FIRST ASCENT" performs its function of identifying a branded line of products from

applicant, the "FIRST ASCENT" mark possesses a separate and distinct commercial impression from the trademark immediately adjacent to it ("SUNCLOUD®"). Ibid. Online catalog pages often display two marks together such as shown on Attachment B. This distinct commercial impressions is even more true because applicant does not own the "SUNCLOUD®" and therefore could not include "SUNCLOUD®" in the application. To maintain the refusal of registration, it must be shown that the consumers will perceive the wording "FIRST ASCENT SUNCLOUD®" as a unitary trademark, where the components possess identical commercial impressions. TMEP §807.12(d); In re Twenty Three East Adams Street Corp, Serial No. 76610826 (TTAB February 13, 2009). In previous cases, the Board has held that mere proximity of the wording is not enough to support a finding of a unitary mark. In re Productive Products International, Inc., Serial No. 78903442 (TTAB January 29, 2009) (where the specimen showed the applied-for mark "DIRT GRABBER" directly adjacent to, and in the same font as, the mark "TAKMAT", however, the proximity of the wording was not enough to find the mark unitary.) Please see Attachment C for a copy of the specimen in In re Productive Products International. In the Productive Products case, both marks were in plain type face, as they are here. As in the case with "DIRT GRABBER" and "TAKMAT", there is nothing linking "FIRST ASCENT" and "SUNCLOUD®". If the mark components do not appear to be modifiers of one another, this is evidence that the additional trademark "is not essential or integral subject matter such that it must be included in the drawing." Ibid. (Finding that the wording "TAKMAT DIRT GRABBER" was not a unitary mark because, in part, "TAKMAT" and "DIRT GRABBER" were not modifiers of one another the way SAN DIEGO modified PADRES REPORT in the mark SAN DIEGO PADRES REPORT.) Here, the applied-for mark "FIRST ASCENT" and the trademark "SUNCLOUD®" possess very different connotations and meanings: the first is a mountaineering term-of-art while the second is the combination of two words that are items in the sky. It is clear that FIRST modifies ASCENT. However, "FIRST ASCENT" does not modify by "SUNCLOUD®", or vice versa, or communicate any meaningful impression to consumers. FIRST ASCENT and SUNCLOUD® simply do not go together. Instead, consumers viewing the applied-for mark, as shown on the specimen, are likely to adopt the logical and reasonable conclusion that "FIRST ASCENT" and "SUNCLOUD®" are separable trademarks with distinct commercial impressions. In re EMCO, Inc., 158 USPQ 622 (TTAB 1968) (finding that "MEYER" and "RESPONDER" were separable trademarks with distinct commercial impressions, despite the examining attorney's argument that the specimen displayed the unitary mark "MEYER RESPONSER", because "MEYER" identified a line of products while the applied-for mark, "RESPONDER", was "intended to and does distinguish" the applicant's goods from others). In re Servel, Inc. 85 USPQ 257, 260 (CCPA 1950) held that the courts in a proper case may recognize the right to registration of one part of an owner's mark consisting of two parts. Here, the two marks have different owners and it only seems reasonable to allow registration of the FIRST ASCENT mark when applicant does not even own the SUNCLOUD® mark. Finally, as the Examiner can appreciate, Applicant includes "SUNCLOUD®" in the online catalog product listing to avoid misleading consumers who would not understand that the glasses are made from a manufacturer other than Eddie Bauer. Applicant's intention was to identity sunglasses sold under two marks owned by different parties, not to display a unitary mark. Because the mark "FIRST ASCENT" has a separate connotation, meaning and function and different owner than the trademark "SUNCLOUD®", the marks have distinct commercial impressions. As a result, registration should not be refused on the basis that the mark shown in the specimen does not match the mark in the drawing. Applicant respectfully requests withdrawal of the refusal of registration and publication of the mark. Applicant has also filed the Notice of Appeal.

EVIDENCE SECTION

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SIGNATURE SECTION	
RESPONSE SIGNATURE	/Sabrina Stavish/
SIGNATORY'S NAME	Sabrina Stavish
SIGNATORY'S POSITION	Attorney, Colorado bar member
SIGNATORY'S PHONE NUMBER	303-863-2972
DATE SIGNED	02/18/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Feb 18 14:04:59 EST 2015
TEAS STAMP	USPTO/RFR-72.164.51.98-20150218140459562786-77464059-5305ff96ddb5463ef3bd7fcf3593fbeb98ba3c717f65546a4e1a6409d3b1115-N/A-N/A-20150218134857373648

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77464059** has been amended as follows:

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

In the Final Office Action with a mailing date of September 22, 2014, the Examining Attorney refused registration on the basis that the mark shown in the specimen did not match the mark shown in the drawing. In response to the refusal for registration, please consider the following. The basis for the refusal of registration is that the mark in the drawing is "FIRST ASCENT" which differs from the mark on the specimen because the third-party owned registered trademark "SUNCLOUD®" appears after "FIRST ASCENT". As such, the Examining Attorney believes the specimen is not a substantially exact representation of the mark shown on the drawing which is "FIRST ASCENT" alone. TMEP §807.12(a). If the applied-for mark makes "a separate and distinct commercial impression apart from any other matter with which the mark is or will be used on the specimen," then registration should not be refused on the basis that the mark shown in the specimen does not match the mark shown in the drawing. TMEP §807.12(d). Therefore, the issue is whether the applied-for mark, "FIRST ASCENT", has a separate and distinct commercial impression apart from the commercial impression of "SUNCLOUD®". The mark "FIRST ASCENT" creates a distinct and separate commercial impression because "FIRST ASCENT" is the name of a particular line of products offered by Eddie Bauer while "SUNCLOUD®" is a separate trademark owned by another party which is used to indicate the manufacturer of the goods. In In re Royal Bodycare, Inc., 83 USPQ2d 1564 (TTAB 2007), the Board reversed a refusal of registration where a specimen showed the applied-for mark "NANOCEUTICAL" next to an additional trademark "RBC". The Board stated "[I]t is well established that a product can bear more than one trademark, that each trademark may perform a different function for consumers and recipients of the productÂ…". Ibid (citing examples of cases where a house mark and a product line mark were found to have different commercial impressions due to their different respective functions). In the present case, the function of the "SUNCLOUD®" mark is to identify the manufacturer of the goods. In contrast, the function of the applied-for mark, "FIRST ASCENT", is to identify sunglasses included in a special line of products offered by the retailer, Eddie Bauer. More specifically, the "FIRST ASCENT" product line is composed of high-performance outdoor clothing, gear and accessories that are selected by elite wilderness guides and experts. The "SUNCLOUD®" brand of sunglasses was selected to be part of the "FIRST ASCENT" branded line of products. As such, both "SUNCLOUD®" and "FIRST ASCENT" are used as trademarks for these particular sunglasses. Attachment A includes information about the selection process for the "FIRST ASCENT" line of products. As stated in Attachment A, "First Ascent is a line of world-class expedition and ski wear created with some of the best mountain and ski guides in the world." Since "FIRST ASCENT" performs its function of identifying a branded line of products from applicant, the "FIRST ASCENT" mark possesses a separate and distinct commercial impression from the trademark immediately adjacent to it ("SUNCLOUD®"). Ibid. Online catalog pages often display two marks together such as shown on Attachment B. This distinct commercial impressions is even more true because applicant does not own the "SUNCLOUD®" and therefore could not include "SUNCLOUD®" in the application. To maintain the refusal of registration, it must be shown that the consumers will perceive the wording "FIRST ASCENT SUNCLOUD®" as a unitary trademark, where the components possess identical commercial impressions. TMEP §807.12(d); In re Twenty Three East Adams Street Corp, Serial No. 76610826 (TTAB

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EVIDENCE

JPG file(s):
Evidence-1
Original PDF file:
evi_721645198-20150218134857373648_._Attachment_A.pdf
Converted PDF file(s) (4 pages)
Evidence-1
Evidence-2
Evidence-3
Evidence-4
Original PDF file:

evi_721645198-20150218134857373648_._Attachment_C.pdf
Converted PDF file(s) (2 pages)
Evidence-1
Evidence-2

SIGNATURE(S)
Request for Reconsideration Signature
Signature: /Sabrina Stavish/ Date: 02/18/2015
Signatory's Name: Sabrina Stavish
Signatory's Position: Attorney, Colorado bar member

Signatory's Phone Number: 303-863-2972

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77464059
Internet Transmission Date: Wed Feb 18 14:04:59 EST 2015
TEAS Stamp: USPTO/RFR-72.164.51.98-20150218140459562
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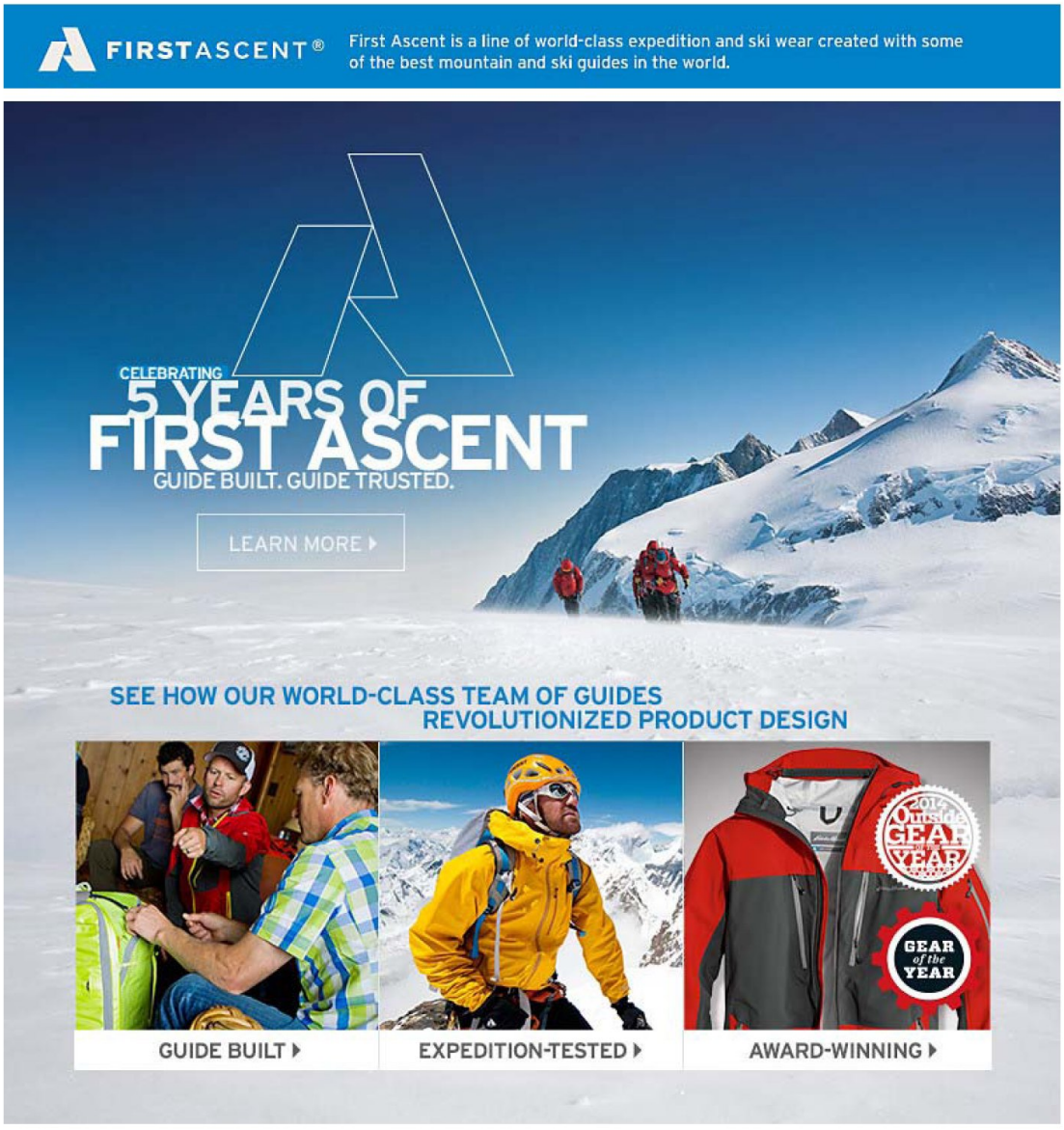
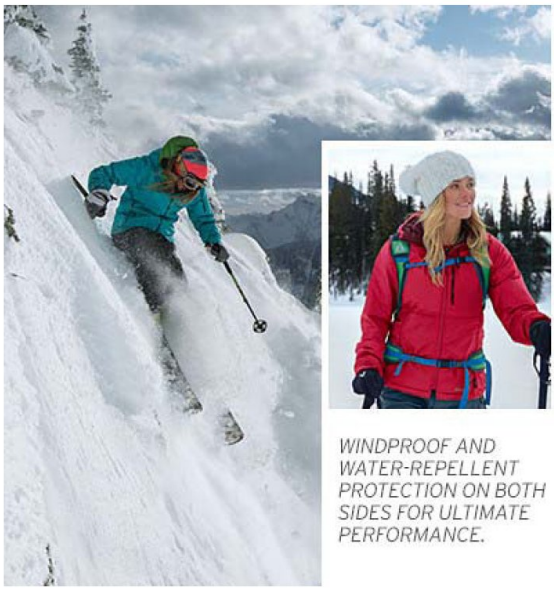
First Ascent

SHOP BY CATEGORY

- Men (45)
- Women (35)
- Kids (10)
- Gear (23)

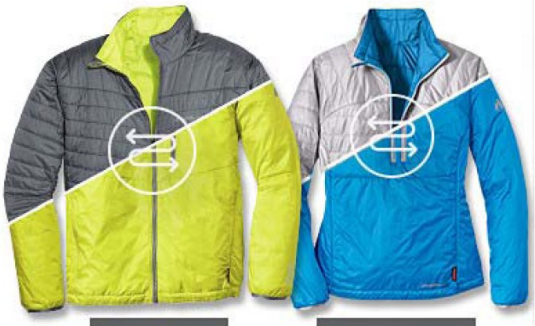




WINDPROOF AND WATER-REPELLENT PROTECTION ON BOTH SIDES FOR ULTIMATE PERFORMANCE.

NEW **IGNITELITE REVERSIBLE**

Bright on one side for high visibility on the mountain; dark on the other side for a lower profile in town.



MEN ▸ WOMEN ▸

FIRSTASCENT

MICROTHERM® STORMDOWN™

LIGHTEST. WARMEST. GUARANTEED.

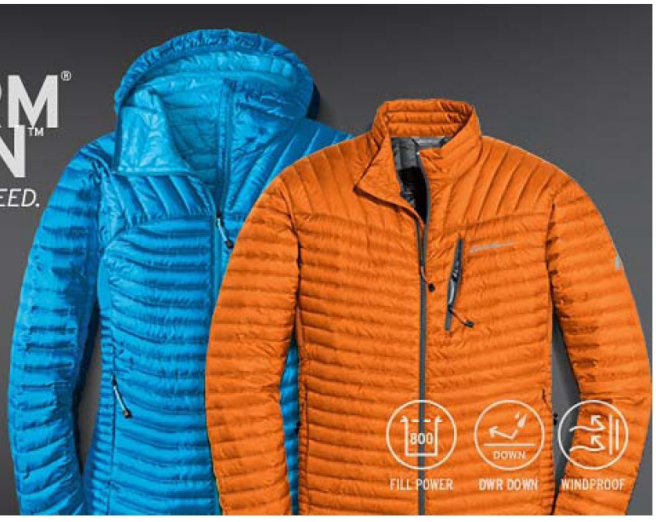
MEN ▸ WOMEN ▸

INTRODUCING

STORMDOWN

POWERED BY **DOWNTEK™**

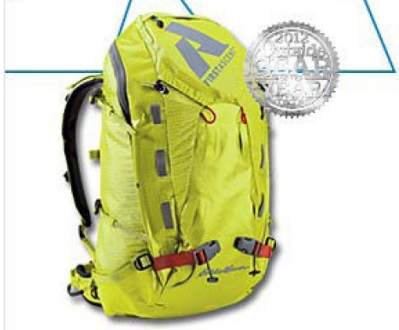
Hydrophobic, DWR-treated down retains loft and insulating power, even in wet conditions.

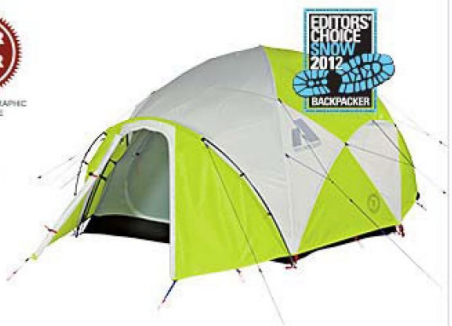


5 YEARS OF FIRST ASCENT

GUIDE BUILT. GUIDE TRUSTED.

53 GEAR-TESTING EXPEDITIONS **13** BEST-IN-CLASS AWARDS





ALCHEMIST®40L ▸ AIRBENDER ▸ KATABATIC ▸

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Eddie Bauer's guide and athlete inspired list of 33 potential resolutions to integrate the adventure ethic into your plans for 2015. ...

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STORE LOCATOR

Find an Eddie Bauer store near you.

Enter zip code ▸

CATALOG QUICK ORDER

Enter a three-part item number.

A00 000 0000 ▸

GIFT CARDS

Cards ship for FREE, or can be sent quickly via email.

SHOP NOW

EARN REWARDS

Join Eddie Bauer Friends and you'll start earning Rewards for every dollar you spend, no matter where you shop.

LEARN MORE SIGN IN TO YOUR ACCOUNT

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- Order Status
- Contact Us
- Returns
- Shipping
- Size Charts
- Wish List
- Request a Catalog
- Site Map

COMPANY INFO

- About Us
- Careers
- Partners
- Supply Chain Disclosure

PROGRAMS & SERVICES

- Affiliate Program
- Eddie Bauer Credit Card
- Pro Deals
- Global ReLeaf

SHOPPING

- Men's Cargo Pants
- Men's Chinos & Khaki Pants
- Men's T-Shirts
- Men's Cargo Shorts
- Men's Dress Shirts
- Men's Polo Shirts
- Women's Sweatshirts & Hoodies
- Women's Tees
- Women's Sweaters & Cardigans
- Women's Dress Pants
- Women's Hiking & Workout Pants
- Women's Capris

CONNECT WITH US

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OUR CREED

To give you such outstanding quality, value, service and guarantee that we may be worthy of your high esteem.™

OUR GUARANTEE

Every item we sell will give you complete satisfaction or you may return it for a full refund.™

THE ORIGINAL OUTDOOR OUTFITTER®

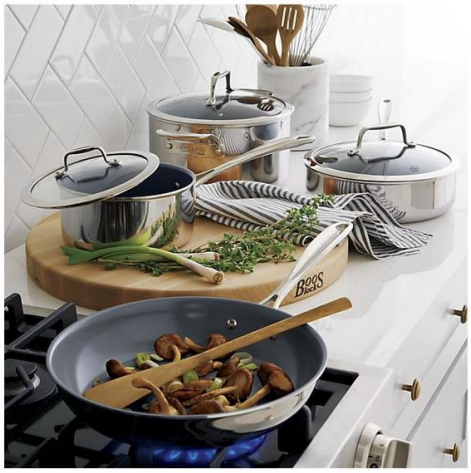
Adventure Everyday™
We Outfit Life's Adventures™

Back to top ▲

1-800-426-8020 — 24 hours a day 7 days a week

ZWILLING ® J.A. Henckels VistaClad Ceramic Nonstick 7-Piece Cookware Set

4.6 (18) Write a review



Crate and Barrel Exclusive

$299.95
sugg. $480.00

Add to Cart Below

▼ The Story

We've partnered with Zwilling J.A. Henckels, the standard-bearer for premium cutlery since 1731 and pioneer of stainless steel knives, to bring you this Crate and Barrel exclusive new ceramic nonstick cookware. The breakthrough eco-friendly CeraForce nonstick ceramic finish is extremely scratch-resistant, and is free of PTFE and PFOA. It is also produced with fewer emissions and does not release fumes when heated. The Henckels traditions of quality, innovation and stainless-steel expertise inform this fully clad, three-ply cookware with an aluminum core for quick and even heat conduction. A magnetic stainless-steel exterior that's 3mm thick makes it compatible with all types of cooktops including induction. Additional features include stay-cool handles with nameplates and easy-control loop design, non-drip pouring rims and tempered glass lids.

▶ Details

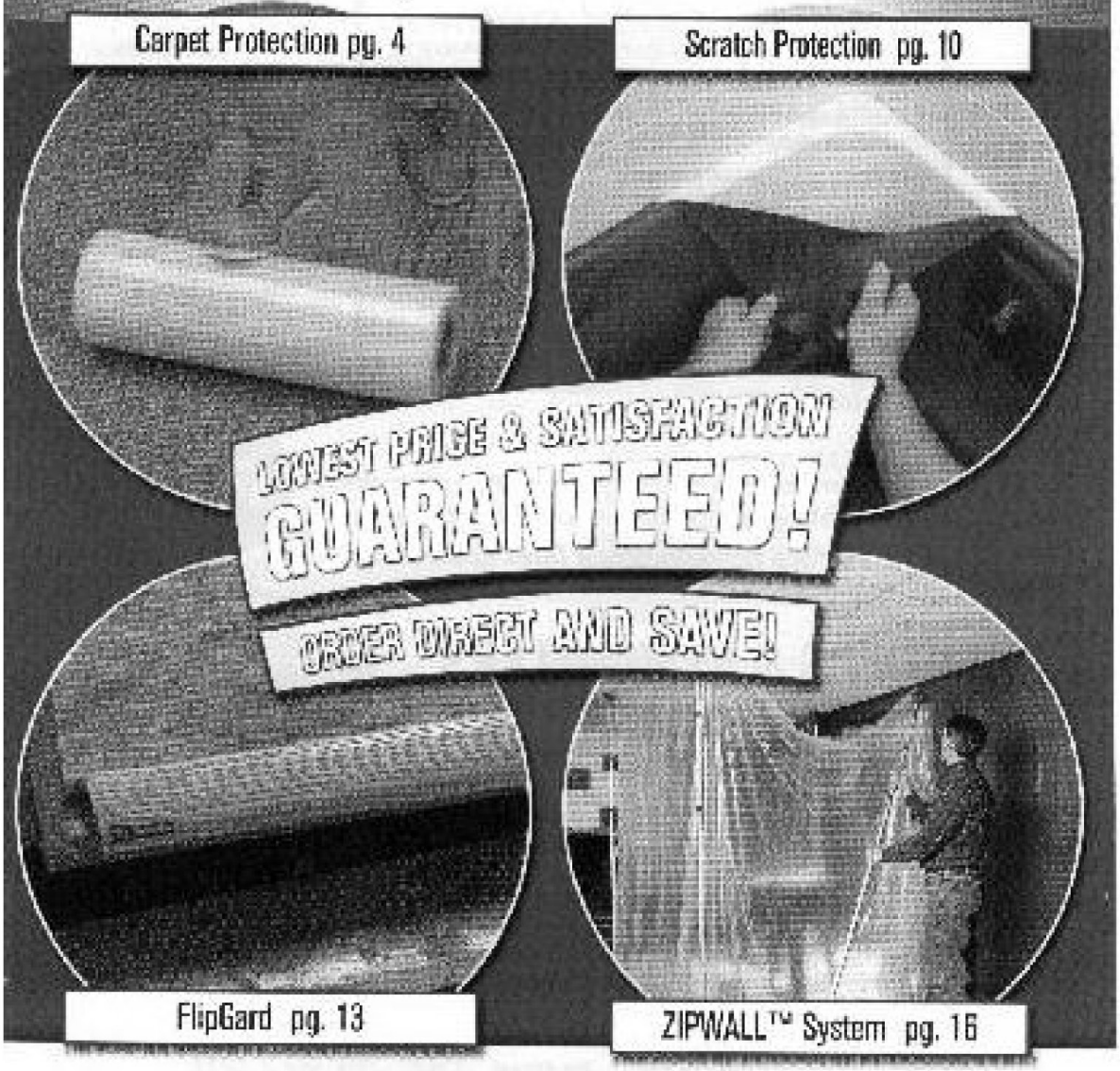
▶ Price Guarantee

▶ Return/Exchange Policy

Recommended For You

Protective Products

Surface Protection Solutions



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SAVE TIME & MONEY!

ELIMINATE EMBARRASSING AND COSTLY "TRACKING" MISHAPS

- SHOE & BOOT COVERS slip over footwear and protect against dirt, scuffs and heel marks.
- Elastic top holds footwear over shoe/boot. Non-slip sole to prevent fraction on slippery surfaces.
- Perfect for protecting surfaces during home tours and open houses.

Impress customers and potential customers by wearing Shoe & Boot Covers while estimating or inspecting.

ITEM NO.	DESCRIPTION	PRS/CRT	WEIGHT	PRICE	DIRECT PRICE
SCR-C	Shoe Covers Regular	50	3 lbs.	~~$ 21.00~~	$ 18.90
SCR-C	Shoe Covers Regular	150	7 lbs.	~~$ 55.00~~	$ 48.90
SCL-1	Shoe Covers Large	50	3 lbs.	~~$ 26.00~~	$ 22.90
SCL-3	Shoe Covers Large	150	7 lbs.	~~$ 65.00~~	$ 58.80

Regular fits shoe size 6-12. Large fits shoe sizes 13-15+. Use Large for boots.

TAKMAT DIRT GRABBER

SAVE TIME & MONEY!

AVOID TIME CONSUMING & COSTLY CLEANUP

of tracked job site dust.

- TAKMAT Dirt Grabber grabs and removes dust and dirt from footwear ... keeps it from being tracked from the job site.
- Each TAKMAT features 30 dust-catching sheets. Once a sheet is dirty, simply peel it off to expose the next sheet.
- With the reusable TAKMAT Base, TAKMAT Dirt Grabber pads are easily moved from job site to job site. Can be used on any surface ... only recommended for use on hardwood, marble, granite and stone floors.
- Available in blue & white 30 sheet pads.

ITEM NO.	DESCRIPTION	WEIGHT	PRICE	DIRECT PRICE
TMW2436	2 – 30 Sheet Pads 24" x 36"/White	6 lbs.	~~$ 69.00~~	$ 57.90
TMB2436	2 – 30 Sheet Pads 24" x 36"/Blue	6 lbs.	~~$ 69.00~~	$ 57.90
TMBASE	1 – Reusable Base 26" x 38"/White	9 lbs.	~~$ 49.00~~	$ 43.90

LOWEST PRICE & SATISFACTION GUARANTEED!